

DIGITAL AUTONOMY OR REGULATORY OVERREACH? A CRITICAL ANALYSIS OF INDIA'S BROADCASTING SERVICES (REGULATION) BILL

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Abstract

The regulation of online platforms and broadcasting services lies at the heart of contemporary debates on democratic governance, free expression, and state control. While the independence of digital broadcasting is often framed as essential to fostering an informed citizenry and safeguarding pluralism, the rapid expansion of online content and the growing influence of digital media have intensified calls for regulatory intervention. Governments worldwide face the challenge of maintaining this equilibrium—curbing misinformation and harmful content while preserving the foundational principles of free speech. This article critically examines India's Broadcasting Services (Regulation) Bill, 2024, situating it within broader legal and policy frameworks governing digital media. It analyses how the Bill navigates the competing imperatives of content regulation and freedom of expression, assessing its implications for social media platforms and Over-The-Top (OTT) services. The article further investigates whether the Bill constitutes a measured response to the challenges of the digital age or an overreach that risks constraining independent media and online discourse. It offers a broader reflection on the evolving nature of digital governance in India and its alignment with constitutional and international standards.

Keywords: Broadcasting Services (Regulation) Bill, Online Content Regulation, Freedom of Speech and Expression, Censorship, Addressing harmful content

1. Introduction

The evolution of digital broadcasting in India has been nothing short of transformative. The rise¹ of Direct-to-Home (DTH) services, Internet Protocol Television (IPTV), and Over-The-Top (OTT) platforms have radically altered the dissemination of information and entertainment, eroding traditional regulatory boundaries and challenging long-established legal frameworks. In an era where digital media increasingly shapes public discourse, the governance of online broadcasting has emerged as a critical fault line between state control and

¹ Mr. Neeraj Soni, *Broadcasting Services (Regulation) Bill, 2024*, (Aug. 9, 2024), <https://www.cyberpeace.org/resources/blogs/broadcasting-services-regulation-bill-2024>

the constitutional imperative of free expression². While technological advancements have expanded access to information, they have also introduced complex regulatory dilemmas concerning content moderation, misinformation, and platform liability³.

India's broadcasting and digital media landscape is governed by a fragmented and, in many respects, outdated regulatory framework. The Cable Television Networks (Regulation) Act⁴, 1995, administered by the Ministry of Information and Broadcasting (MIB), primarily governs television channels and cable operators, supplemented by the Cable Television Networks Rules⁵, 1994, which outlines content restrictions and advertising standards. Digital content regulation falls under Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules⁶, 2021, establishing a Code of Ethics for online news, current affairs, and curated audiovisual content. The Prasar Bharati (Broadcasting Corporation of India) Act⁷, 1990 mandates public broadcasters such as Doordarshan and All India Radio to maintain editorial independence while fulfilling public service obligations. The Cinematograph Act⁸, 1952 grants the Central Board of Film Certification (CBFC) authority over film classification, while the Information Technology (IT) Act⁹, 2000, alongside the 2021 IT Rules, imposes intermediary liability and prescribes content moderation obligations for digital platforms. Additional regulatory instruments, including the Digital Personal Data Protection Act¹⁰, 2023, the Advertising Standards Council of India (ASCI) Code, the Indecent Representation of Women (Prohibition) Act¹¹, 1986, and the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act¹², 2007, further delineates the legal contours of India's media governance regime.

Despite this extensive regulatory apparatus, the existing framework is neither cohesive nor adequately equipped to address the realities of a rapidly evolving digital ecosystem. Regulatory inconsistencies, overlapping mandates, and the absence of a comprehensive legal structure for

² PETER LUNT & SONIA LIVINGSTONE, MEDIA REGULATION: GOVERNANCE AND THE INTERESTS OF CITIZENS AND CONSUMERS. 1-232 (2011)

³ *Resolving content moderation dilemmas between free speech and harmful misinformation*, PubMed (Feb. 7, 2023), <https://pubmed.ncbi.nlm.nih.gov/36749721/>

⁴ The Cable Television Networks (Regulation) Act, 1995, No. 7, Acts of Parliament, 1995 (India).

⁵ The Cable Television Networks Rules, 1994 (India).

⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India).

⁷ The Prasar Bharati (Broadcasting Corporation of India) Act, 1990, No. 25, Acts of Parliament, 1990 (India).

⁸ The Cinematograph Act, 1952, No. 37, Acts of Parliament, 1952 (India).

⁹ The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

¹⁰ Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

¹¹ Indecent Representation of Women (Prohibition) Act, 1986, No. 60, Acts of Parliament, 1986 (India).

¹² Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007, No. 11, Acts of Parliament, 2007 (India).

digital broadcasting have exposed significant governance gaps, necessitating legislative reform. The Broadcasting Services (Regulation) Bill, 2023, was introduced to consolidate and modernise India's broadcasting regulatory framework. However, the Bill attracted immediate scrutiny from industry stakeholders, legal scholars, and civil society, who raised concerns over its potential impact on free speech, editorial independence, and the autonomy of digital platforms¹³. In response to widespread criticism, the Ministry of Information and Broadcasting (MIB) discreetly circulated a revised draft of the Broadcasting Services (Regulation) Bill, 2024 to a select group of stakeholders, each copy uniquely watermarked to prevent unauthorised dissemination. Despite these precautions, unofficial versions of the Bill swiftly emerged online, fuelling renewed scrutiny of the government's regulatory ambitions and broader implications for digital governance. The decision to limit consultations to a closed group of stakeholders rather than engaging in a transparent and inclusive process, has only deepened concerns regarding the legitimacy of the reform effort and the extent to which a narrow set of interests is shaping regulatory interventions¹⁴.

The 2024 Bill introduces modifications, most notably an expanded regulatory ambit, which will be examined later in this paper. The revised framework imposes new compliance obligations, including penalties for failure to register with the government or establish a Content Evaluation Committee, reinforcing the state's authority over digital content regulation. However, beyond these procedural adjustments, the substantive provisions of the Bill remain largely unaltered, raising important questions as to whether these revisions constitute a genuine response to the criticisms levelled at the 2023 draft or whether they merely reflect an effort to consolidate state control through more refined regulatory mechanisms. The absence of a significant shift in Bill's underlying philosophy suggests that while the government has been compelled to recalibrate its strategy, it has not fundamentally reconsidered the nature or necessity of its intervention in the digital broadcasting space.

This paper critically analyses the Broadcasting Services (Regulation) Bill, 2024, evaluating whether it constitutes a necessary digital media governance recalibration or an undue state regulatory power expansion. It investigates whether the Bill strikes a constitutionally defensible balance between curbing misinformation and protecting freedom of expression or,

¹³ *The Bill That Never Was: The Comeback, Resistance, and Downfall of the Broadcasting Bill*, (Aug. 30, 2024), <https://internetfreedom.in/a-broadcasting-summary/>.

¹⁴ Akanksha Nagar, *I&B Ministry 'suspends' work on Draft Broadcasting Bill*, (Oct. 24, 2024), <https://www.storyboard18.com/how-it-works/ib-ministry-suspends-work-on-draft-broadcasting-bill-45857.htm>.

conversely, whether it imposes excessive state control at the expense of media independence. The paper first examines the legislative intent behind the 2023 Bill before scrutinising the substantive changes reflected in the 2024 iteration. We have analysed the Bill within the broader constitutional and legal landscape to assess its implications for the future of digital broadcasting regulation in India.

2. Purpose and Intent of Broadcasting Services (Regulation) Bill, 2023

Unlike traditional television broadcasters, which have long been subject to statutory licensing, content restrictions, and direct state oversight, digital streaming platforms have, until now, operated in a largely unregulated and ambiguous legal environment. This lack of a *sui generis* legal framework for OTT platforms has resulted in significant regulatory asymmetry, with legacy broadcasters subjected to stringent compliance obligations. In contrast, digital platforms remain free from comparable constraints. The Broadcasting Services (Regulation) Bill, 2023 was introduced as a legislative response to this imbalance, seeking to bring all forms of broadcasting—television, digital streaming, and online news—within a unified regulatory framework.

The Bill's stated objective was not just to replace the Cable Television Networks (Regulation) Act 1995 but to modernise India's broadcasting laws in a manner reflective of contemporary technological realities. The Explanatory Note¹⁵ to the Bill emphasised the need to streamline, consolidate, and update existing regulations, ensuring they remained adaptive, consistent, and responsive to the transformations within the broadcasting sector. By establishing a common set of regulatory obligations, the Bill aimed to provide greater legal clarity, reduce compliance burdens, and level the playing field between traditional and digital media entities.

A fundamental rationale for the Broadcasting Services (Regulation) Bill was the government's assertion that it sought to correct the regulatory asymmetry between conventional broadcasters and OTT platforms. Under the pre-existing legal framework, television networks have long been required to comply with licensing requirements, content classification obligations, and government-mandated broadcasting standards, whereas digital platforms have remained largely unregulated despite their exponential expansion and growing influence. The government justified this intervention as necessary to safeguard consumer interests, ensure content accountability, and mitigate risks associated with misinformation, hate speech, and

¹⁵ Explanatory Note to the Broadcasting Services (Regulation) Bill, 2023 (India).

unlawful material. The proposed regulatory extension aimed to subject all media services to equivalent scrutiny, aligning with broader global trends in platform governance and digital content regulation.

In addition to addressing regulatory disparity, the Bill was positioned to stimulate investment, enhance market predictability, and foster innovation in India's digital media sector. The government argued that a more structured and transparent regulatory environment would provide legal certainty for both domestic and international investors, reinforcing India's ambition to position itself as a global centre for digital content production and distribution. The codification of compliance obligations was presented as an effort to replace the existing fragmented and inconsistent regulatory landscape with a more coherent and forward-looking framework that would ostensibly balance industry growth with consumer protection and media accountability.

Despite these ostensible policy objectives, the Bill provoked considerable opposition, particularly regarding the breadth of state intervention in digital content regulation. While a harmonised legal regime may, in principle, provide clarity and regulatory coherence, critics maintained that the Bill would substantially expand governmental oversight over digital platforms in ways that could undermine media independence and editorial autonomy. Of particular concern was the Bill's extension of regulatory obligations beyond entertainment content to digital news platforms, raising profound questions about press freedom, content moderation, and the role of the state in shaping online discourse. The absence of robust institutional safeguards against regulatory overreach only reinforced fears that the Bill could serve as a mechanism for state control over digital narratives rather than as a genuine attempt to modernise media regulation. The lack of transparency in the legislative process and the absence of meaningful consultation with stakeholders further eroded confidence in the Bill's purported objectives.

The extent to which the Bill would have empowered regulators to dictate or influence platform policies remained one of the most contentious aspects of its proposed legal framework. Concerns regarding vague regulatory mandates, the discretionary power vested in executive authorities, and the potential chilling effect on digital speech ultimately led to the withdrawal of the Bill in August 2024. Its failure to address fundamental issues of media pluralism, independent content governance, and the risks of centralised regulatory control underscores the broader challenge of reconciling digital governance with democratic principles. This challenge

will undoubtedly persist as India navigates the evolving complexities of digital media regulation.

3. Stakeholders' Interpretation of The Intent Behind the Bill

The Broadcasting Services (Regulation) Bill has provoked a robust and, at times, contentious debate among stakeholders¹⁶, many of whom have expressed deep reservations about its potential to reconfigure the regulatory landscape for digital media in ways that could erode fundamental freedoms and entrench state control¹⁷. A key concern is the Bill's expansive scope, which extends beyond traditional broadcasting to encompass digital content creators, social media accounts, and online news platforms, thereby blurring the lines between mass media regulation and individual speech rights in the digital domain.

Perhaps the most controversial aspect of the revised draft¹⁸ is its apparent reclassification of social media accounts as "Digital News Broadcasters"¹⁹, a move that would subject individuals—including those who post videos, host podcasts, or write about current affairs online—to statutory broadcasting regulations. Under this framework, YouTubers, independent journalists, and other digital content creators monetising their presence through advertising or sponsorships could be compelled to adhere to the same content and advertising codes as established digital news entities²⁰. This conflation of individual expression with institutionalised news broadcasting has raised profound concerns about freedom of expression under Article 19(1) of the Indian Constitution, particularly given the risk that such a regime could deter independent reporting and incentivise self-censorship.

¹⁶ Stakeholders are all entities with an interest in the regulations and operations of the broadcasting industry, whether directly or indirectly affected. This includes broadcasters, cable operators, content creators, online streaming platforms, media advocacy groups, consumer organisations, and civil society, which address concerns related to content quality, diversity, and ethical standards. Government authorities shape policy and oversight, while technology providers influence the regulatory framework through innovation.

¹⁷ Harry Lock, *Why Broadcasting Bill has provoked fears of censorship in India*, Public Media Alliance (Aug. 7, 2024), <https://www.publicmediaalliance.org/why-broadcasting-bill-has-provoked-fears-of-censorship-in-india/>.

¹⁸ Mr. Neeraj Soni, *Broadcasting Services (Regulation) Bill, 2024*, (Aug. 9, 2024), <https://www.cyberpeace.org/resources/blogs/broadcasting-services-regulation-bill-2024>

¹⁹ A. Agrawal, *New Draft of Broadcasting Bill: News Influencers May Be Classified as Broadcasters*, Hindustan Times (July 26, 2024), <https://www.hindustantimes.com/india-news/new-draft-of-broadcasting-bill-news-influencers-may-be-classified-as-broadcasters-101721961764666.html>.

²⁰ Mr. Neeraj Soni, *Broadcasting Services (Regulation) Bill, 2024*, (Aug. 9, 2024), <https://www.cyberpeace.org/resources/blogs/broadcasting-services-regulation-bill-2024>

²¹ INDIA CONST. art. 19

The Bill's categorisation²² of certain content creators as "OTT Broadcasters" based on their volume of output, has similarly drawn criticism. Stakeholders argue²³ that the imposition of uniform regulations on internet-based programmes disregards the fundamental structural differences between OTT services and traditional broadcasting²⁴. By broadly defining "broadcasting networks" and "broadcasting network operators" and including OTT platforms within its ambit, the Bill has been accused of failing to account for digital content dissemination's decentralised, interactive, and globalised nature. Many industry²⁵ voices have urged a differentiated regulatory approach, cautioning that a one-size-fits-all model could stifle innovation and restrict access to diverse perspectives, undermining the open, participatory nature of the Internet.

Beyond its expansive reach, the 2023 Bill's provisions on content regulation have fuelled concerns about editorial independence and press freedom²⁶. The requirement that all broadcast content be certified by internal Content Evaluation Committees (CECs) has been described as tantamount to pre-publication censorship, with the potential to delay timely news coverage and discourage reporting on politically sensitive issues. The prospect of government-mandated compliance committees within digital news organisations has been met with widespread opposition, with critics arguing that such mechanisms compromise editorial autonomy and introduce indirect state influence over journalistic content.

Equally problematic is the 2023 Bill's substantial regulatory overlap with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021). Given that OTT platforms and digital broadcasters are already subject to content classification and self-regulation under the IT Rules, stakeholders have questioned the necessity of duplicating compliance obligations. The Bill's definition of "OTT Broadcasting Service" mirrors the IT Rules, creating ambiguity about whether platforms will be subject to

²² *Regular Social Media Participants Are 'Digital News Broadcasters' Under Draft Bill*, The Wire, <https://thewire.in/media/social-media-videos-text-digital-news-broadcasting-bill>.

²³ *Deepstrat Recommendations on Broadcasting Services (Regulation) Bill 2023*, Google Docs, <https://drive.google.com/file/d/1D8SESER7itE8pmaoRDIYixqvT0vc4C0w/view?ref=static.internetfreedom.in>.

²⁴ Jyoti Panday, *OTT Regulation in India: Turf Wars & Definitional Ambiguities*, Internet Governance Project (Sep. 26, 2024), <https://www.internetgovernance.org/2024/09/26/ott-regulation-in-india-turf-wars-definitional-ambiguities/>.

²⁵ *Access Now Submission – Broadcasting Services Bill – January 2024*, BB, 2023 Consultation Responses (Google Drive), <https://drive.google.com/drive/folders/1ZviJmkiHQgDhwj7B0HbJXHbJ5ybGUtZe?ref=static.internetfreedom.in>.

²⁶ *IAMAI Submission on the Draft "Broadcasting Services (Regulation) Bill, 2023*, (Google Drive), <https://drive.google.com/drive/folders/1ZviJmkiHQgDhwj7B0HbJXHbJ5ybGUtZe?ref=static.internetfreedom.in>.

two parallel and potentially conflicting regulatory regimes. Introducing a three-tier oversight structure, including Self-Regulatory Organisations (SROs), further complicates matters, as it replicates the IT Rules' existing framework. The Bill's use of the term "self-regulatory organisation", in contrast to the IT Rules' "self-regulatory body", has led to uncertainty over jurisdictional overlaps, particularly for OTT platforms already compliant with existing content governance obligations.

Moreover, the Bill imposes additional compliance requirements without providing sufficient regulatory clarity. For example, while OTT platforms are already required to classify content and ensure adherence to national integrity and religious sensitivity norms under the IT Rules, the Bill mandates further compliance with yet-to-be-defined Programme and Advertisement Codes. Unlike the Cable Television Networks (Regulation) Act, 1995, which explicitly delineates the parameters of these codes, the Bill leaves their substantive content undefined, raising concerns that future rulemaking could be leveraged to impose vague, overbroad, or politically motivated restrictions.

Perhaps most alarmingly, the 2023 Bill vests significant discretionary authority in the executive, particularly through establishing the Broadcast Advisory Council (BAC). Under the Bill, the Central Government is empowered to bypass lower-tier grievance redressal mechanisms and directly refer cases to the BAC, a power widely viewed as disproportionate and vulnerable to misuse²⁷. The composition of the BAC itself has drawn scrutiny, with stakeholders arguing that Clause 27²⁸ fails to ensure a balanced representation of independent voices, thereby undermining its credibility as an impartial adjudicatory body²⁹. The opacity surrounding the appointment process has raised significant concerns that the BAC may operate not as a neutral adjudicatory body but as a conduit for governmental influence over digital media regulation. The absence of clear safeguards to ensure its independence has only deepened apprehensions that its mandate could extend beyond content dispute resolution to the broader regulation of media narratives in ways that align with state interests. The Bill's

²⁷ *Summary of Stakeholder Comments Received by MIB on the Broadcasting Bill, 2023*, Internet Freedom Foundation (August 6, 2024), <https://internetfreedom.in/summary-of-stakeholder-comments-on-the-broadcasting-bill-2023/>.

²⁸ Broadcasting Services (Regulation) Bill, 2023, s 27 (India).

²⁹ Shriya, *DeepStrat Recommendations on Broadcasting Services (Regulation) Bill 2023*, (Jan. 5, 2024), <https://deepstrat.in/2024/01/05/deepstrat-recommendations-on-broadcasting-services-regulation-bill-2023/?ref=static.internetfreedom.in>.

approach to online news portals has similarly raised concerns³⁰. Clause 20(1)³¹ exempts newspapers and e-paper publishers from Programme Code compliance yet fails to clarify whether digital news portals operated by newspaper publishers fall within this exemption. Since online news articles are often identical to their print counterparts, stakeholders have called for explicit legislative clarity to prevent arbitrary regulatory distinctions between print and digital journalism.

Beyond its substantive provisions, the procedural opacity surrounding the Bill's consultation process has been a persistent point of contention. The explanatory note³² and draft Bill were released exclusively in English, limiting meaningful engagement from non-English-speaking stakeholders. Calls for a more inclusive and transparent process—including public disclosure of stakeholder submissions, counter-comment opportunities, and clearer guidelines for future rule-making—have largely gone unaddressed. The exclusion of independent media organisations and civil society voices from substantive decision-making has reinforced perceptions that the Bill's development was driven by regulatory expedience rather than participatory consensus-building.

Finally, stakeholders³³ have warned that the Bill's broad and ambiguous definitions could enable selective enforcement, particularly against independent journalists and commentators whose reporting challenges state narratives. The expansive regulatory powers conferred upon the BAC and CEC, coupled with the government's significant role in oversight, have heightened concerns that the Bill could function as a tool for indirect censorship. Clause 2734, which governs the BAC's membership, lacks safeguards to ensure independent representation, reinforcing fears that regulatory decisions could be subject to political influence. The proposed Self-Regulatory Organisations (SROs) under Clause 2635 similarly lack mechanisms to ensure institutional independence, raising doubts about their ability to function as effective, impartial oversight bodies.

³⁰ T Panjiar, *Summary of Stakeholder Comments Received by MIB on the Broadcasting Bill, 2023*, Internet Freedom Foundation (August 6, 2024), <https://internetfreedom.in/summary-of-stakeholder-comments-on-the-broadcasting-bill-2023/>.

³¹ Broadcasting Services (Regulation) Bill, 2023, s 20(1) (India).

³² Explanatory Note to the Broadcasting Services (Regulation) Bill, 2023 (India).

³³ Krishaank Jugiani, CUTS Comments on Broadcasting Services (Regulation) Bill, 2023'

³⁴ Broadcasting Services (Regulation) Bill, 2023 (India).

³⁵ Broadcasting Services (Regulation) Bill, 2023, s 26

In response to these concerns, some stakeholders³⁶ have proposed that the Inter-Departmental Committee³⁷ (IDC), under the IT Rules, 2021, remain the primary regulatory body for digital media, arguing that the Bill's provisions introduce unnecessary bureaucratic duplication. Others have called for harmonisation between the penalties prescribed under the Bill and existing laws, ensuring greater legal consistency and predictability for digital platforms.

4. Provisions of the Bill Raising Concerns of Government Overreach and Indirect Censorship

Censorship of online content and broadcasting services remains a deeply contested issue, particularly where regulatory interventions encroach upon fundamental rights of expression. The ability to create and disseminate content is central to the exercise of free speech, and any regulatory framework that imposes excessive constraints risks undermining individual liberties and the broader democratic imperative of an open and pluralistic public sphere. While the government justifies the regulatory measures necessary for maintaining social order, safeguarding national security, and preventing the spread of hate speech, such justifications must be scrutinised against the constitutional commitment to free expression. The delicate balance between regulation and fundamental rights cannot be dictated solely by the state but must be grounded in principles of necessity, proportionality, and judicial oversight.

The Bill has triggered significant debate over its potential to facilitate government overreach. The broad and ambiguous language used in defining prohibited content—particularly terms such as "harmful" or "offensive"—raises concerns about subjective interpretation and discretionary enforcement. Vaguely defined categories of restricted content open the door to arbitrary takedowns, enabling authorities to target dissenting voices while maintaining public order. The absence of clear statutory guidelines to determine the scope of these prohibitions creates a regulatory environment where content creators are left uncertain about the boundaries of permissible expression. Such uncertainty fosters a chilling effect, as creators may engage in self-censorship to preemptively avoid punitive action.

The Bill's provision requiring conformity with a Programme Code and an Advertisement Code exacerbates these concerns, as it vests exclusive power in the Central Government to prescribe the substantive content of these Codes without providing any predefined guidelines. This leaves

³⁶ T. Panjiar, *Summary of Stakeholder Comments Received by MIB on the Broadcasting Bill, 2023*, Internet Freedom Foundation (August 6, 2024), <https://internetfreedom.in/summary-of-stakeholder-comments-on-the-broadcasting-bill-2023/>.

³⁷ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, RI 14 (India).

the standards governing digital content subject to opaque and discretionary rule-making by the executive. The ability of the state to retrospectively define violations, absent explicit statutory benchmarks, grants authorities significant latitude to invoke regulatory provisions selectively against particular content, especially in politically sensitive contexts. Such unchecked regulatory discretion is incompatible with legal certainty and due process principles.

Perhaps the most troubling aspect of the Bill is the broad powers granted to government authorities to immediately remove content on the grounds of public order, morality, or national security without requiring judicial oversight or independent review. Concentrating regulatory authority within government-controlled bodies eliminates meaningful institutional checks and balances, rendering content moderation decisions susceptible to political considerations rather than objective legal principles. The absence of an independent appellate mechanism further compounds the risk of biased or arbitrary enforcement, as affected individuals and entities have no recourse to challenge executive actions. A regulatory regime in which the government acts as both the rule-maker and the adjudicator of compliance undermines the fundamental principle of separation of powers, which remains a cornerstone of any constitutional democracy.

The executive's monopoly over content regulation also creates an environment of systemic pliancy within the broadcasting and digital media. Fearful of regulatory repercussions, media outlets and digital content creators may adopt a deferential stance toward state narratives, eroding the independence of journalism and public discourse. The mere possibility of legal sanctions for content deemed undesirable by the ruling government fosters a culture of deference in which the press and digital media exercise self-censorship to avoid confrontation with state authorities. The Bill thus risks institutionalising a media landscape in which regulatory compliance is dictated not by clear legal norms but by the shifting political prerogatives of those in power.

The pre-censorship mechanisms embedded in the Bill, which require certain categories of content to obtain prior approval before dissemination, further reinforce the perception that the regulatory framework is geared toward control rather than accountability. Imposing bureaucratic hurdles on content creators stifles journalistic and creative expression, particularly in politically sensitive or socially controversial areas. In any democratic society, prior restraints on speech must be subject to the highest level of judicial scrutiny, as they represent one of the most extreme forms of censorship.

The Bill also introduces financial disincentives for non-compliance, imposing significant fines on social media platforms and individual content creators who fail to adhere to government directives. While ostensibly framed as a deterrent against disseminating harmful content, imposing such penalties further incentivises self-censorship, as individuals and digital platforms would seek to preemptively align their content with state-imposed constraints to avoid financial liability. The economic burden of compliance, particularly for independent journalists and smaller digital media entities, risks entrenching a system in which only well-resourced entities can afford to contest regulatory decisions, further marginalising dissenting voices.

The Bill's extension of regulatory oversight to OTT platforms and digital news services, effectively subjecting them to the same content moderation requirements as traditional broadcasters, raises pressing concerns regarding press freedom and online discourse. The fundamental distinction between linear broadcasting and on-demand digital media necessitates a differentiated regulatory approach, yet the Bill fails to recognise this divergence. Digital platforms, unlike traditional broadcasters, operate within a decentralised and interactive information ecosystem, and the application of legacy regulatory frameworks to such platforms risks curbing the openness and dynamism that characterise online media³⁸. Collapsing these distinct categories under a single regulatory umbrella disregards the fundamental shifts in how information is produced, disseminated, and consumed in the digital era.

India's judicial approach to censorship has varied, reflecting the broader tensions between state interests and individual freedoms³⁹. Courts have sometimes upheld state-imposed restrictions on content, citing concerns of public morality and national security. However, judicial precedent also affirms that censorship must not be imposed arbitrarily and that restrictions must be narrowly tailored to serve a legitimate public purpose⁴⁰. The determination of whether content warrants censorship must be grounded in a clear and objective legal framework rather than left to the discretionary assessments of executive authorities⁴¹. The jurisprudence

38 Poell, Thomas, David B. Nieborg, and Brooke Erin Duffy, *Platforms and cultural production*. John Wiley & Sons, 2021.

39 Basu, S., & Sen, S. (2023). *Silenced voices: unravelling India's dissent crisis through historical and contemporary analysis of free speech and suppression*, *Information & Communications Technology Law*, 33(1), 42–65, <https://doi.org/10.1080/13600834.2023.2249780>.

40 Basu, S., & Sen, S. (2023). *Silenced voices: unravelling India's dissent crisis through historical and contemporary analysis of free speech and suppression*, *Information & Communications Technology Law*, 33(1), 42–65, <https://doi.org/10.1080/13600834.2023.2249780>.

41 Gautam Bhatia, *Offend, shock, or disturb: Free speech under the Indian Constitution*, Oxford University Press, (2016)

surrounding content regulation has recognised that the necessity of censorship is inherently context-dependent, with the judiciary intervening only where a clear and demonstrable harm is established.⁴² In its current form, the Bill fails to incorporate these constitutional safeguards, raising serious concerns about the unchecked expansion of state power in regulating digital media.

The underlying issue is not just regulatory oversight but democratic legitimacy. A regulatory regime consolidating unilateral authority within the executive, lacking independent review mechanisms, and imposing vaguely defined content restrictions is inherently incompatible with the principles of free expression enshrined in constitutional and international human rights law. The lack of procedural safeguards against misuse of regulatory provisions creates an environment where the state assumes an outsized role in shaping public discourse, undermining the foundational democratic principle that the marketplace of ideas must remain free from excessive state interference. The Bill, rather than providing a balanced regulatory framework, appears to entrench mechanisms that could be used to suppress dissent, control narratives, and restrict media autonomy.

The regulatory measures proposed in the Bill must be subjected to rigorous scrutiny regarding their legal validity and broader implications for democratic governance. We argue that a content regulation regime that fails to provide institutional safeguards against abuse, lacks meaningful judicial oversight, and centralises discretionary power within the executive is unlikely to achieve its stated objectives without undermining the very freedoms it purports to protect. If regulation is to serve the interests of democracy rather than state control, it must be transparent, proportionate, and insulated from political interference. A failure to ensure these principles risks transforming content regulation from a legitimate tool of public interest governance into an instrument of censorship and coercion.

The close relationship of digital platforms with state authority in India⁴³ underscores the increasingly precarious balance between public-private cooperation and governmental influence over the digital sphere. While these platforms serve as conduits for state-led

⁴² Basu, S., & Sen, S. (2023). *Silenced voices: unravelling India's dissent crisis through historical and contemporary analysis of free speech and suppression*, Information & Communications Technology Law, 33(1), 42–65, <https://doi.org/10.1080/13600834.2023.2249780>.

⁴³ *Regulation or Repression? Government Influence on Political Content Moderation in India and Thailand*, Carnegie Endowment for International Peace, <https://carnegieendowment.org/research/2024/07/india-thailand-social-media-moderation?lang=en>.

initiatives, particularly in electoral engagement and public policy dissemination, their proximity to the government exposes them to implicit and explicit political pressure. The extent to which platforms are compelled to align their content moderation policies with state preferences raises critical concerns about the erosion of digital autonomy. A regulatory environment in which digital intermediaries must either comply with state directives or face punitive action fundamentally alters the role of these platforms from neutral hosts of information to instruments of political influence. The consolidation of governmental authority over the digital domain—whether through direct regulation or coercive partnerships—must be examined regarding its legal validity and broader implications for the integrity of public discourse.

The regulation of film and digital broadcasting, particularly in the Indian context, implicates long-standing tensions between state interests, public morality, and individual creative freedom. Few mediums influence public perception as profoundly as visual media, particularly in an era where digital platforms shape cultural narratives and political discourse. The necessity of a regulatory framework that governs potentially harmful content is undisputed. Yet, the contours of such regulation require far greater precision than what is often reflected in broad legislative mandates. The claim that content regulation is essential to maintaining public decency, morality, and social order cannot serve as an unqualified justification for expansive state control. The invocation of such justifications without robust procedural safeguards risks establishing a regime in which the boundaries of permissible expression are dictated not by neutral legal principles but by the imperatives of political expediency.

The jurisprudence of pre-censorship in India reveals the intricate balancing act between the imperatives of state regulation and the foundational commitment to free expression in a constitutional democracy. Indian courts have long wrestled with this paradox, recognising that prior restraints on speech do not constitute a violation of constitutional guarantees. However, they have repeatedly cautioned that strict standards of necessity, precision, and proportionality must justify such restrictions. In *D.C. Saxena (Dr.) v. The Hon'ble Chief Justice of India*⁴⁴, the Supreme Court articulated a critical democratic tension: while free speech is indispensable to the functioning of democracy, a democratic society must also possess the authority to impose reasonable limits on expression to preserve public order, protect individual dignity, and safeguard collective interests.

⁴⁴ *D. C. Saxena (Dr.) v. The Hon'ble Chief Justice of India*, (1996) 5 SCC 216 (India).

This dual obligation—to protect and regulate speech—demands a jurisprudence that moves beyond abstract rights-based discourse and engages with the contextual realities in which speech occurs. An expression cannot be assessed in isolation; its legality and legitimacy are contingent upon a constellation of factors, including the speaker's position, the nature of the audience, the intended objective of the speech, the reaction it provokes, and the forum in which it is exercised. The Court further affirmed that the State has a legitimate, albeit limited, role in regulating speech—not simply to curb defamation or libel but to uphold the broader principle that the exercise of liberty must not encroach upon the rights of others.

Yet, at the heart of this legal inquiry lies an unavoidable reality: what constitutes permissible speech is inherently subjective and susceptible to interpretative variance. While content moderation may be justified in narrow and exceptional circumstances, it cannot be entrusted to unchecked bureaucratic discretion. In the absence of clearly defined statutory thresholds, the power to censor risks degenerating into an instrument of state control rather than a safeguard of democratic accountability. Nowhere is this tension more acute than in the regulation of violent or explicit content—particularly in the context of protecting vulnerable populations such as children. However, the necessity of such regulation must be carefully balanced against the ever-present danger of a legal regime that facilitates the suppression of dissent under the guise of public interest.

The distinction between regulation in the public interest and state censorship is not merely a question of legal semantics but a fundamental issue of democratic governance. The constitutional recognition that free speech is not absolute does not license the state to impose restrictions that exceed the narrow scope of legitimate limitations. The argument that unrestricted content creation vests excessive power in media entities is equally applicable to a regulatory structure that places discretionary control in the hands of the executive. A legal framework that enables preemptive intervention in content dissemination demands stringent oversight, for the consequences of overreach extend beyond the immediate suppression of particular forms of expression to the broader deterrent effect on artistic and journalistic freedom. The mere existence of a regulatory mechanism is insufficient to justify its legitimacy; the specificity of its application, the transparency of its procedures, and the independence of its adjudication determine whether it serves as a legitimate constraint or a means of suppressing dissent.

The argument that digital and broadcast media differ from traditional forms of expression in their immediacy and reach cannot be used to justify an undifferentiated approach to regulation. The assumption that digital content requires heightened scrutiny must be accompanied by recognising that the characteristics that make these platforms powerful also render them susceptible to government overreach. A regulatory architecture prioritising state control over independent oversight subverts the principles that distinguish democratic governance from authoritarian regulation. The constitutional imperative is not merely to regulate content in the interest of public welfare but to do so in a manner that ensures the state does not become the arbiter of permissible discourse.

A discussion of content regulation that fails to engage with the potential for abuse is inherently incomplete. The exercise of state power in this domain must be structured to prevent the imposition of ideological conformity under the guise of legal compliance. The challenge is not simply to prevent harmful content but to do so without enabling a system in which political considerations dictate what may be expressed. A legal regime that imposes pre-censorship without judicial oversight, vests discretionary authority in the executive, and lacks independent review mechanisms is not merely inadequate but fundamentally incompatible with the principles of constitutional democracy. The balance between public interest and individual freedom is not achieved through the unchecked expansion of state power but through a legal framework that is precise, proportionate, and resistant to political manipulation. Any failure to incorporate these principles risks transforming content regulation from a legitimate function of governance into an instrument of coercion, with consequences that extend far beyond the media landscape to the broader erosion of civil liberties.

5. Balancing Content Regulation Without Undermining Freedom of Expression

Regulating digital content within a democratic framework necessitates a careful equilibrium between state intervention and the fundamental right to free expression. The Broadcasting Services (Regulation) Bill introduces a sweeping framework that seeks to govern digital and traditional broadcasters alike. However, its regulatory ambitions raise concerns about whether it unduly infringes upon media autonomy and the right to free speech. While the Bill purports to address misinformation, hate speech, and public order issues, its scope must be assessed against constitutional protections, established jurisprudence, and comparative legal developments.

The jurisprudence of free expression, both in India and internationally, has long acknowledged that the ability to speak freely is not merely an individual right but an essential condition for a functioning democracy. Justice Cardozo famously articulated in *Palko v. Connecticut*⁴⁵ that free expression is the "matrix, the indispensable condition" of other liberties. This foundational principle resonates strongly within the Indian constitutional scheme, where Article 19(1)(a) guarantees the right to free speech, subject only to reasonable restrictions outlined in Article 19(2). However, as courts have repeatedly held, restrictions on speech must be reasonable in form and proportionate in substance, a principle reaffirmed in *S. Rangarajan v. P. Jagjivan Ram*⁴⁶ and later jurisprudence. The Supreme Court's decision in *The Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*⁴⁷ further underscored the imperative of pluralism in media governance, holding that monopolisation—whether by the state or private entities—runs counter to the democratic imperative of ensuring diverse viewpoints and broad access to information. In the digital era, where social media and OTT platforms function as primary vehicles for discourse, the state's role must be facilitation rather than control, ensuring a framework that promotes accountability without chilling expression.

Including digital content creators within the Bill's regulatory framework has raised concerns about its impact on independent journalism and online discourse. The broad categorisation of social media users as "Digital News Broadcasters" is particularly problematic, as it risks imposing the same compliance burdens on individual commentators as on institutional news organisations. This conflation expands the state's regulatory reach and threatens to stifle independent voices, as individuals may find themselves subject to administrative obligations disproportionate to their role in the media landscape. The government's justification—that digital media wields significant influence and must be subject to oversight—does not warrant a one-size-fits-all regulatory approach. The distinction between institutional and individual expression is not merely formal but foundational, and any attempt to erase this boundary risks overreach. While it is true that digital misinformation poses new regulatory challenges, the response must be precise, carefully tailored, and consistent with constitutional guarantees rather than an indiscriminate expansion of state control over digital spaces.

⁴⁵ *Palko v. Connecticut*, 302 U.S. 319 (1937) (India).

⁴⁶ *S. Rangarajan v. P. Jagjivan Ram & Ors.*, 1989 (2) SCC 574 (India).

⁴⁷ *The Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*, [1995] 1 S.C.R. 1036 (India).

The requirement for content pre-certification by government-mandated Content Evaluation Committees (CECs) represents another area where the Bill's provisions appear to encroach upon constitutionally protected expression—the Supreme Court, in *K.A. Abbas v. Union of India*⁴⁸ recognised the legitimacy of content regulation in certain contexts, such as film certification, but also cautioned against the dangers of vague, discretionary standards that can be applied arbitrarily. The present Bill provides for regulatory mechanisms that, while ostensibly aimed at curbing harmful content, grant broad discretionary powers to state-appointed bodies without clear procedural safeguards. The chilling effect of pre-publication scrutiny is well documented, and the risk of administrative censorship must not be dismissed as a mere procedural requirement. Any regulatory framework governing digital expression must be narrowly tailored to target specific harms, ensuring that it does not impose undue restrictions on legitimate speech.

A further concern arises from the Bill's overlap with the IT Rules, 2021, particularly concerning platform liability, content moderation, and self-regulatory structures. The IT Rules already establish a tiered framework for content governance, including a self-regulatory mechanism for digital platforms, and the Bill's introduction of additional oversight bodies and compliance requirements creates regulatory duplication that risks legal uncertainty and administrative inefficiency. There is little justification for introducing parallel oversight mechanisms when existing structures, if properly implemented, already provide for content regulation in the digital space. The fact that the Bill mandates compliance with yet-to-be-defined Programme and Advertisement Codes without articulating substantive criteria exacerbates this uncertainty, leaving digital broadcasters vulnerable to shifting regulatory interpretations. Regulatory frameworks must be transparent, predictable, and aligned with established principles of legality rather than dependent on vague and discretionary rule-making processes.

The Bill's vesting of discretionary powers in the executive, particularly through the Broadcast Advisory Council, raises additional concerns regarding the potential politicisation of content governance. The ability of the government to bypass lower-tier grievance mechanisms and refer cases directly to the BAC introduces a troubling dimension of direct state intervention in content oversight. The composition of the BAC, which lacks clear safeguards to ensure independent representation, further heightens fears of regulatory capture. The risk of executive overreach is not merely hypothetical; past interventions in digital media regulation demonstrate

⁴⁸ *K. A. Abbas v. The Union of India & Anr.*, [1971] 2 S.C.R. 446 (India).

the tendency of governments to weaponise content laws for political ends, particularly in electoral contexts. Without institutional safeguards ensuring independence, transparency, and procedural fairness, such regulatory bodies may function less as neutral adjudicators and more as instruments of state control over media narratives.

The necessity of fact-checking mechanisms to combat misinformation is widely acknowledged, yet the question of who controls these mechanisms remains central to any discussion on content regulation. The increasing trend of state-controlled fact-checking bodies raises critical concerns about government influence over the classification of news content. The distinction between deliberate falsehoods and legitimate dissent is often blurred in politically charged environments, and any regulatory intervention in this space must be grounded in principles of independence, procedural fairness, and oversight. Internationally, models such as the European Union's Digital Services Act and the United Kingdom's Online Safety Act offer alternative approaches that balance platform accountability with free expression without centralising fact-checking authority within the state. A co-regulatory model, where digital platforms engage in self-regulation under an independent statutory framework, may provide a more effective and balanced approach.

A recent controversy has ignited widespread backlash and national outrage following remarks made by Ranveer Allahbadia, popularly known as BeerBiceps, during an appearance on Samay Raina's show, *India's Got Latent*⁴⁹. The Supreme Court has categorically condemned his remarks as "disgusting," "filthy," and "insulting," with the Bench pointedly observing that "there is something very dirty in his mind that has been vomited by way of this program." This judicial rebuke underscores a deeper societal dilemma: where should the boundary be drawn between the right to free expression and the obligation to maintain a standard of public decency?

The Court's expressed intent to address this issue through regulatory intervention raises concerns that such measures may serve as a pretext to expand the reach of broadcasting regulations into digital spaces. His comments—widely perceived as offensive and obscene—have triggered a wave of legal complaints across multiple jurisdictions, subjecting him to intense legal scrutiny. The magnitude of this response reflects broader anxieties about the limits

⁴⁹ Economic Times, *Why BeerBiceps' Ranveer Allahbadia Is Facing Backlash for His Comment on Parents in Samay Raina's Show—What Did He Say*, The Economic Times (Feb. 10, 2025), <https://economictimes.indiatimes.com/news/new-updates/why-beerbiceps-ranveer-allahbadia-is-facing-backlash-for-his-comment-on-parents-in-samay-rainas-show-what-did-he-say/articleshow/118105129.cms?from=mdr>.

of permissible discourse in public media and the evolving responsibilities of content creators in shaping societal narratives. While it is undeniable that creative spaces often flourish through satire, irreverence, and controversial discourse, there remains a critical distinction between content that provokes meaningful debate and expression that descends into obscenity or moral degradation. The question is not merely whether certain speech should be censored but rather how a democratic society reconciles the imperative of free expression with the need to safeguard public sensibilities. Any regulatory response must be measured, principled, and resistant to the overreach that risks chilling legitimate speech under the guise of protecting societal values.

These recent incidents underscore the urgency of ensuring regulatory safeguards against state overreach. The blocking of OTT platforms⁵⁰ under the IT Act in March 2024 and the Election Commission's directive to Twitter⁵¹ to remove political content ahead of the 2024 Indian general elections reflect a broader pattern of increased state intervention in digital content regulation. While governments often invoke public order, morality, or misinformation concerns to justify content restrictions, the risk remains that such interventions are applied selectively, particularly against dissenting voices. A regulatory framework that enables arbitrary or politically motivated censorship undermines the democratic function of free speech and creates an environment of self-censorship and regulatory fear.

6. Legal Ambiguities and Provisions Under Heightened Scrutiny

In 2006, the government introduced a Broadcasting Services (Regulation) Bill, which was on similar lines, although there were marked distinctions compared to the present Bill. The Bill similarly sought repeal of the CTN Act, provided for the replacement of the Programme Code stipulated under Rule 6⁵² and Advertising Code prescribed under Rule 7⁵³ of the CTN Rules, 1994, by new guidelines being a 'Content Code'. The Bill also clarified that broadcasting services would be required to be operated only after obtaining the desired license. There were provisions for suspension or revocation of licenses, although the terms 'public interest' and 'communal harmony' remained vague and open for subjective interpretations. It also introduced

⁵⁰ Ministry of I&B Takes Action against Obscene Content on OTT Platforms, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2014477>.

⁵¹ The Hindu Bureau, *X Takes down Four Posts by Leaders of BJP, AAP, YSR Congress, TDP on Election Commission of India Order* (April 17, 2024), <https://www.thehindu.com/news/national/x-takes-down-four-posts-by-leaders-of-bjp-aap-ysr-congress-tdp-on-election-commission-of-india-order/article68073285.ece>.

⁵² The Cable Television Networks Rules, 1994, RI 6 (India).

⁵³ The Cable Television Networks Rules, 1994, RI 7 (India).

Digital Addressable Systems⁵⁴ (DASs) and established an independent regulatory authority, the Broadcast Regulatory Authority, to regulate and facilitate the development of broadcasting services.

The present Bill has reignited debates over how the government should regulate digital platforms and whether such interventions are necessary given existing frameworks. The Information Technology Rules 2021, as amended, already impose compliance obligations on intermediaries, mandate due diligence measures, and provide for grievance redressal mechanisms concerning online content. The additional layers of oversight introduced by the Broadcasting Services (Regulation) Bill appear redundant in some respects and unduly expansive in others, particularly where they extend beyond traditional media to include Over-the-Top (OTT) platforms and independent digital content creators. The assumption that all forms of digital media should be subject to a uniform regulatory framework, irrespective of their functional and structural differences, disregards the nuances of how digital content operates and how users engage with it.

The distinction between push-based and pull-based media models is particularly relevant in this context. Traditional broadcasting, which operates on a push-based model, delivers content to audiences without active user selection, necessitating regulatory oversight to ensure content appropriateness. In contrast, OTT platforms function on a pull-based model, where users deliberately choose what to consume, affording them greater control over their media exposure. This fundamental difference challenges the rationale for subjecting OTT services to the same degree of regulatory scrutiny as traditional broadcasters, particularly when existing laws already address content-related concerns, such as obscenity, misinformation, and national security threats. The Bill's failure to distinguish between these models raises concerns that OTT platforms are being brought under its ambit not due to a demonstrated regulatory necessity but as part of a broader effort to consolidate governmental control over digital media.

The implications extend beyond structural overreach and regulatory duplication to the risk of selective enforcement. The vague language employed in key provisions, particularly those governing permissible content, national security, and public morality, leaves significant room for discretionary application. Journalists, independent media organisations, and critics of the government fear that such provisions could be leveraged to suppress dissent, restrict investigative journalism, and penalise those who challenge dominant political narratives. The

⁵⁴ The Cable Television Networks (Regulation) Act, 1995, s 4A, No. 7, Acts of Parliament, 1995 (India).

potential for misuse is not speculative; it reflects broader concerns raised in response to the IT Rules, 2021, which were similarly criticised for their lack of transparency, excessive executive control, and chilling effect on free speech. The extension of comparable provisions in the present Bill, with even broader definitions of regulated entities, exacerbates these concerns and underscores the necessity of clearly defined safeguards against arbitrary enforcement.

The result is a regulatory environment where small creators, unable to meet compliance costs or navigate complex legal frameworks, may either self-censor or exit the space altogether, diminishing the diversity of perspectives available to the public. The opacity surrounding the drafting and consultation process has further undermined confidence in the Bill. The government's decision to circulate drafts selectively among chosen stakeholders rather than engaging in an inclusive consultation process has reinforced concerns about regulatory overreach. The exclusion of key players from substantive discussions, particularly independent media organisations and civil society representatives, suggests a deliberate attempt to curtail meaningful critique and expedite the passage of a framework that lacks broad-based legitimacy. The absence of transparency weakens the legislative process's credibility and raises questions about whose interests the Bill ultimately serves. A regulatory model conceived without public trust, procedural fairness, or institutional accountability is inherently flawed and unlikely to withstand legal and democratic scrutiny.

The potential impact on minority communities and marginalised groups has also emerged as a pressing concern. Critics argue that the Bill's vague definitional criteria and discretionary enforcement mechanisms may be weaponised to suppress the representation of certain identities, cultures, or perspectives that do not conform to majoritarian sensibilities. The risk of content regulation being employed as a means of erasure rather than protection is heightened in an environment where state institutions have historically shaped dominant narratives. The absence of safeguards to ensure that regulatory interventions do not disproportionately affect underrepresented voices raises serious questions about the Bill's compatibility with the principles of pluralism, inclusivity, and democratic discourse.

Beyond concerns over speech and representation, the Bill also threatens to impose excessive financial and administrative burdens on digital platforms, which may, in turn, affect content diversity, increase costs for consumers, and stifle innovation in media production and distribution. The imposition of licensing fees, compliance costs, and mandatory content evaluation procedures could render smaller and independent platforms less competitive,

reinforcing market dominance by established players that can afford regulatory compliance. The net effect of such a framework would be to concentrate control over digital media in the hands of a few, diminishing competition, limiting consumer choice, and constraining creative experimentation. While the Bill is ostensibly framed as a progressive step toward modernising digital content regulation, its broad scope, ambiguous provisions, and potential for misuse highlight the urgent need for a more nuanced and balanced approach. Content governance must be structured to protect societal interests without encroaching upon constitutional freedoms or enabling regulatory overreach. The principles of transparency, proportionality, and independent oversight must form the cornerstone of any regulatory initiative, ensuring that governance mechanisms serve public interest objectives rather than political imperatives. The next phase of this discussion must focus on how a recalibrated regulatory framework can achieve legitimate policy aims while preserving the integrity of digital expression and safeguarding media independence.

7. The Future of OTT Regulation: Lessons from the Withdrawal and the Road Ahead

Ensuring that content regulation reflects contemporary challenges without undermining fundamental freedoms requires a legal framework that is both precise and adaptable. Legislation must establish a level playing field across media platforms while recognising the technological transformations that distinguish digital content from traditional broadcasting. A well-crafted regulatory framework must balance free expression, innovation, and public interest protection without becoming a tool for government overreach or selective enforcement. Any regulatory intervention must be subject to clear procedural safeguards, independent oversight, and well-defined legal standards, preventing the arbitrary application of state power.

The scope of media rights differs significantly from individual rights due to the scale of impact, audience reach, and the broader public interest implications involved. Clear delineation of broadcaster categories is necessary to ensure that independent content creators who do not operate as formal news organisations are not subjected to the same compliance obligations as large-scale broadcasters. Legal ambiguity fosters uncertainty, self-censorship, and the potential for discretionary enforcement, making legislative clarity an essential prerequisite for any content regulation framework. Undefined statutory provisions create the conditions for misuse, allowing for regulatory interventions that lack consistency and predictability.

An independent and autonomous Media Regulatory Authority representing journalists, broadcasters, consumer rights groups, legal experts, and government officials would enhance

transparency, fairness, and institutional credibility⁵⁵. Excessive executive control over content moderation risks undermining regulatory neutrality, making it imperative that enforcement mechanisms operate independently of political influence. A regulatory authority structured with diverse stakeholder representation would be far more effective in ensuring compliance, addressing grievances, and fostering a balanced approach to media governance. Inclusive consultations that engage independent content creators, civil society organisations, and representatives from marginalised communities would further strengthen the legitimacy of the regulatory process, ensuring that legislative provisions reflect broad-based concerns rather than the interests of a select few.

Safeguarding plurality in media representation remains a critical issue, particularly concerning concerns that vaguely defined regulatory provisions could be weaponised to silence dissenting voices or suppress minority perspectives.⁵⁶ The absence of concrete safeguards against the selective application of content restrictions increases the risk that regulatory measures could be used to entrench majoritarian narratives at the expense of media diversity. Strengthening legal protections for independent journalism and cultural representation would help prevent state-imposed erasure or marginalisation of certain viewpoints under the pretext of regulatory compliance.

The inclusion of OTT platforms within the same regulatory framework as traditional broadcasters raises fundamental concerns regarding the distinct nature of digital content consumption. The assumption that the same legal requirements should govern OTT services as linear television broadcasting fails to acknowledge the fundamental shift in media engagement brought about by digital platforms. A regulatory approach that fails to distinguish between push-based and pull-based media models imposes unnecessary constraints on platforms that rely on user-driven content selection. A tailored, light-touch regulatory framework designed

⁵⁵ See EU's Media Freedom Act. The Media Freedom Act seeks to harmonise the fragmented regulatory landscape governing media freedom, pluralism, and editorial independence across EU member states. By creating a more cohesive legal framework, the Act enhances the functioning of the internal market for media services while preventing regulatory barriers that could hinder cross-border operations of media service providers within the European Union. Serving as a complementary measure to the Digital Services Act (DSA) and the Digital Markets Act (DMA), the Media Freedom Act addresses sector-specific challenges that remain unaddressed by these broader legislative instruments. While the DSA and DMA establish harmonised rules for online platforms and digital markets, the Media Freedom Act focuses on the unique regulatory needs of the media sector, ensuring that issues related to press freedom, editorial autonomy, and media plurality receive the legal protections necessary to safeguard democratic discourse in the digital age. <https://www.media-freedom-act.com/>

⁵⁶ Basu, S., & Sen, S. (2023), *Silenced voices: unravelling India's dissent crisis through historical and contemporary analysis of free speech and suppression*, Information & Communications Technology Law, 33(1), 42–65. <https://doi.org/10.1080/13600834.2023.2249780>.

specifically for OTT services would allow for greater flexibility in content governance while ensuring appropriate safeguards for issues such as data protection, piracy, and responsible advertising.

A structured content classification system akin to the Cinematograph Act⁵⁷ would effectively ensure content governance without excessive state intervention. A regulatory model that includes clear rating categories such as Universal (U), Parental Guidance (U/A), Adult (A), and Specialised (S) classifications would provide adequate consumer information while preserving artistic and journalistic freedom. A regulatory framework that emphasises transparency in content classification rather than direct intervention in content creation, would strike a far more appropriate balance between regulatory oversight and expressive freedoms.

Imposing severe financial penalties or legal restrictions without a proportionate and graded compliance mechanism increases the risk of deterring independent content production. A graduated penalty system that distinguishes between minor infractions and serious violations would ensure that enforcement measures remain fair, proportionate, and aligned with fundamental principles of justice. Judicial oversight over content takedown requests, regulatory sanctions, and licensing disputes must be integral to any enforcement mechanism, preventing state overreach and ensuring due process.

Regulatory frameworks must also evolve in response to technological advancements rather than becoming static instruments that fail to accommodate digital content creation and distribution changes. A pilot-based approach, where regulatory provisions are tested regionally before full implementation, would provide valuable insights into the practical challenges of enforcement and allow for necessary refinements before nationwide rollout. Alignment with global standards in digital governance would further ensure that domestic regulations do not isolate India's digital ecosystem from international best practices.

Public trust in content regulation depends significantly on the transparency and inclusivity of the legislative process. Establishing mechanisms for public consultation, stakeholder engagement, and periodic review would ensure that media regulation remains accountable to the communities it serves rather than a top-down imposition dictated by state authorities. The introduction of open hearings, digital feedback platforms, and public commentary periods

⁵⁷ The Cinematograph Act, 1952, s 5A, No. 37, Acts of Parliament, 1952 (India).

would enhance the legitimacy of policy decisions while fostering greater civic participation in digital governance.

Licensing frameworks for broadcasters must be simplified, transparent, and free from bureaucratic inefficiencies, ensuring that regulatory compliance does not become an undue barrier to market entry or innovation. Community and regional broadcasters should be provided with specific regulatory carve-outs that encourage local media diversity, ensuring that the concentration of media ownership does not undermine content plurality. Jurisdictional issues concerning internationally based digital platforms must also be addressed through coherent regulatory mechanisms that account for the cross-border nature of digital content distribution.

The growing concentration of media ownership poses a significant risk to democratic discourse and competition within the sector. Stronger anti-monopoly measures, restrictions on cross-media ownership, and transparency requirements for media acquisitions would foster a more competitive and diverse content environment. The risks associated with corporate consolidation of media power necessitate structural interventions to prevent a handful of dominant players from controlling the digital and broadcast narrative.

A well-defined regulatory framework must protect creative and journalistic independence while ensuring responsible broadcasting practices. The emphasis must remain on preventing hate speech, misinformation, and content that incites violence rather than enabling state control over narrative formation. Strengthening self-regulatory bodies and co-regulation models would provide a more sustainable approach to content governance, ensuring platforms operate within established ethical guidelines without direct government interference.

Digital literacy and counter-speech initiatives should play a central role in content governance strategies, ensuring that regulatory interventions do not substitute civic engagement and public discourse. The long-term objective should be to build a digital ecosystem where content moderation serves the public interest rather than reinforcing state control over expression. Regulatory models that disproportionately burden smaller platforms while allowing powerful entities to dominate the space must be restructured to ensure market fairness.

A content governance framework must remain distinct from moral policing or political censorship. Platforms should not be weaponised as tools for silencing dissent or enforcing ideological conformity. The role of regulation should be to preserve open discourse while addressing legitimate concerns about content accountability. An approach prioritising state intervention over market-driven transparency risks reducing digital platforms to instruments of

political propaganda rather than spaces for genuine creative and journalistic expression. A legal framework that balances media accountability and expressive freedom ensures that neither the state nor powerful private entities wield disproportionate influence over the narratives that shape public opinion.

8. Conclusion

The Broadcasting Services (Regulation) Bill represents an ambitious, albeit contentious, attempt by the Indian government to modernise the regulatory framework in response to the shifting paradigms of media consumption. As we have examined, the Bill seeks to address the growing influence of digital platforms and individual content creators, bringing them within a structured legal framework. However, its approach raises fundamental questions about the balance between state oversight, media independence, and preserving democratic freedoms. A regulatory model that fails to reflect these competing interests with clarity and precision risks becoming an instrument of control rather than a mechanism for ensuring accountability.

The necessity of revisiting the Bill is evident. Any effort to regulate the digital media landscape must be predicated upon transparent and inclusive consultations that engage all relevant stakeholders, including journalists, content creators, civil society organisations, and independent media bodies. A constructive dialogue between regulators and those directly affected by these provisions is not simply advisable but essential to legitimising the regulatory process and preventing the perception of unilateral state control. A regulatory framework lacking broad input and democratic legitimacy is unlikely to withstand legal scrutiny or gain public trust.

Drawing from comparative regulatory experiences across jurisdictions, India has the opportunity to establish a balanced and forward-looking framework that accommodates innovation while ensuring responsible digital governance.⁵⁸ The lessons from global best practices underscore the importance of proportionality, accountability, and institutional safeguards in designing content regulation policies that neither stifle creativity nor allow

⁵⁸ European Union adopts a structured regulatory approach. The Audiovisual Media Services Directive (AVMSD) mandates that OTT platforms adhere to specific content standards, ensuring the protection of minors and the prevention of hate speech. See CARLINI, Roberta, Matteo TREVISAN, and Elda BROGI. *Monitoring media pluralism in the digital era: application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2022. Country report: Italy*. European University Institute, 2023. See also Chawla, Ms Gunjan, and Nidhi Buch. *Regulation Of Web-Based Entertainment In India: Evaluating Self-Regulation Over Censorship As A Mechanism For Regulating Ott Platforms*, *Journal of Namibian Studies: History Politics Culture* 36 (2023): 134-155.

unregulated harm. A regulatory model prioritising transparency and legal precision over ambiguity and executive discretion is a legal and democratic imperative.

The challenge ahead is not simply one of drafting new legislation but of ensuring that regulation enhances, rather than diminishes, the role of digital media as a platform for diverse expression, public engagement, and critical discourse. The law must facilitate innovation and democratic deliberation rather than a barrier to independent media operations. If India is to develop a robust, future-proof regulatory framework, it must resist the temptation of over-centralisation and opaque rule-making. Instead, the emphasis must remain on safeguarding the foundational principles of free speech, plurality, and an open digital ecosystem that serves both the interests of the public and the demands of a rapidly evolving media landscape.